



April 5, 2001

Mr. Ernesto Rodriguez  
Assistant County Attorney  
El Paso County  
500 East San Antonio, Room 203  
El Paso, Texas 79901

OR2001-1371

Dear Mr. Rodriguez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 145693.

The El Paso County Sheriff's Department (the "department") received a request for all documents regarding former El Paso County inmates George Angel Rivas and Larry James Harper, more specifically, "their visitor lists, next of kin or other contact information, lists of cellmates, communications with authorities, and discipline records, plus any other documents you have on these inmates." You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you state that the "[r]equestor has narrowed his request to the visitors' list, the next of kin or other contact information, visitors received and disciplinary records." You further inform us that the department sent an e-mail to the requestor seeking a confirmation of the narrowing of his request, but that the requestor had not responded as of the date of your request for a ruling from this office. *See* Gov't Code § 552.222(b). We will therefore consider your exceptions to disclosure as they apply to all of the submitted information, which is evidently responsive to the initial request.

We first note that section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." The submitted information contains records the attorney general provided to the department relating to services provided by the attorney general as the Title IV-D

agency under chapter 231 of the Family Code. Section 231.108 of the Family Code provides that

- (a) Except as provided by Subsection (c), all files and records of services provided under this chapter, including information concerning a custodial parent, noncustodial parent, child, and an alleged or presumed father, are confidential.

The records at issue are confidential under section 231.108(a), but evidently were released to the department in accordance with subsection (c) which authorizes release for certain IV-D purposes. *See* Fam. Code § 231.108(c). It is the well-settled policy of this state that governmental bodies should cooperate with each other in the interest of the efficient and economical administration of their statutory duties. Attorney General Opinion H-683 (1975). The Texas Public Information Act does not undercut that policy. *Id.* Confidential information may thus be transferred between state agencies without destroying its confidential character and without constituting a release to the public if the agency to which the information is transferred has authority to obtain the information. *Id.* at 4; Open Records Decision No. 516 (1989), 490 (1988). Because the department properly obtained the information at issue, we conclude that this information, which we have marked with a red tag, is confidential under section 231.108 of the Family Code, and is therefore excepted from disclosure under section 552.101 of the Government Code.

You also assert that a portion of the requested information is confidential under the Medical Practice Act (the “MPA”). Some of the records at issue are medical records, access to which is governed by the MPA, chapter 159 of the Occupations Code. Section 159.002 of the MPA provides:

- (b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.
- (c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient’s behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

The medical records must be released upon the patient’s signed, written consent, provided that the consent specifies (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. Occ. Code §§ 159.004, .005. If a patient is deceased, medical records may be released only on the signed consent of the deceased’s personal representative. Occ. Code §§ 159.005(a)(5). Section 159.002(c) also requires that any subsequent release of medical records be consistent

with the purposes for which the governmental body obtained the records. Open Records Decision No. 565 at 7 (1990). Therefore, the submitted medical records may be released only as provided under the MPA. Open Records Decision No. 598 (1991). We have marked with a green tag the medical records subject to the MPA.

We will next address your argument under section 552.108 for the remaining information. Section 552.108, the "law enforcement exception," provides:

(a) [i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of 552.021 if: (1) release of the information would interfere with the detection, investigation or prosecution of crime; (2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication; or (3) it is information that: (A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or (B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [public disclosure] if: (1) release of the internal record or notation would interfere with law enforcement or prosecution; (2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or (3) the internal record or notation: (A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or (B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(c) This section does not exempt from the requirements of Section 552.021

may be invoked by any proper custodian of information which relates to the investigation or prosecution. *See, e.g.*, Open Records Decision Nos. 474 (1987), 372 (1983); *see also* Open Records Decision No. 586 (1991) (need of another governmental body to withhold requested information may provide compelling reason for nondisclosure under section 552.108). Therefore, except as otherwise noted below, we conclude that the remaining information is excepted at this time under section 552.108(a)(1) of the Government Code. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

We note, however, that section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Basic information is the type of information that is considered to be front page offense report information even if this information is not actually located on the front page of an offense report. *See generally Houston Chronicle Publ'g Co., supra*; Open Records Decision No. 127 (1976). Thus, we next address the section 552.101 assertion with respect to the basic information.

Where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). In addition to information protected by statute, section 552.101 encompasses the doctrines of common law and constitutional privacy. In this instance, the requestor is asking for all documents of two named individuals, which requires the department to compile criminal history information on each individual. We find, however, that the right of privacy of only one of the named individuals has been implicated. The right of privacy is purely personal and lapses upon death. *See Moore v. Charles B. Pierce Film Enterprises Inc.*, 589 S.W.2d 489 (Tex. Civ. App.--Texarkana 1979, writ ref'd n.r.e.); *see also* Attorney General Opinions JM-229 (1984); H-917 (1976); Open Records Decision No. 272 at 1 (1981). The department, therefore, must withhold basic information concerning Mr. Rivas pursuant to section 552.101. As Mr. Harper is now deceased, we conclude that basic information pertaining to Mr. Harper may not be withheld pursuant to section 552.101 in conjunction with a right of privacy. As no other exception has been demonstrated to apply to this information, basic information pertaining to Mr. Harper must be released.

In addition, we note that section 552.022 of the Government Code makes certain information expressly public, and therefore not subject to discretionary exceptions to disclosure.<sup>1</sup> The

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<sup>1</sup>Discretionary exceptions are intended to protect only the interests of the governmental body, as distinct from exceptions which are intended to protect information deemed confidential by law or the interests of third parties. *See, e.g.*, Open Records Decision Nos. 630 at 4 (1994) (governmental body may waive attorney-client privilege, section 552.107(1)), 592 at 8 (1991) (governmental body may waive section 552.104, information relating to competition or bidding), 522 at 4 (1989) (discretionary exceptions in general). Discretionary exceptions therefore do not constitute "other law" that makes information confidential.

submitted information contains many documents that have been filed with a court. Documents filed with a court are generally a matter of public record and may not be withheld from disclosure. Gov't Code § 552.022(a)(17); *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54 (Tex. 1992). Thus, in this case, unless the court has sealed the documents, you must release the court-filed records we have marked with a blue tag.

To summarize, a portion of the requested information must be withheld under section 231.108 of the Family Code in conjunction with section 552.101 of the Government Code. Medical records may be released only in accordance with the MPA. Basic information pertaining to Mr. Rivas is excepted from disclosure under section 552.101 in conjunction with common law privacy. The remainder of the requested information may be withheld under section 552.108(a)(1),<sup>2</sup> with the exception of basic information pertaining to Mr. Harper, and certain court-filed documents, which must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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<sup>2</sup>As we find that the requested visitor lists are excepted from disclosure under section 552.108, we need not address your argument under section 552.101 for this information.

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael A. Pearle  
Assistant Attorney General  
Open Records Division

MAP/seg

Ref: ID# 145693

Encl. Submitted documents

cc: Mr. Brooks Egerton  
Reporter  
The Dallas Morning News  
P.O. Box 655237  
Dallas, Texas 75265  
(w/o enclosures)